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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
STACEY SARNECKI)	OEA Matter No. J-0147-10
Employee)	
)	Date of Issuance: June 7, 2010
v.)	
)	Lois Hochhauser
D.C. METROPOLITAN POLICE)	Administrative Judge
DEPARTMENT)	
Agency)	
_____)	

Stacey Sarnecki, Employee
Brenda Wilmore, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Stacey Sarnecki (“Employee” herein) filed a petition with the Office of Employee Appeals (OEA) on November 13, 2009, appealing the decision of the D.C. Metropolitan Police Department (“Agency” herein) not to reinstate her to her position as a police officer with Agency following her resignation on October 21, 2008. On April 23, 2010, Agency filed a motion for summary disposition, arguing that OEA lacked jurisdiction of the matter since Ms. Sarnecki was not employed by Agency at the time she filed the petition.

This matter was assigned to me on May 11, 2010. I issued an Order on May 14, 2010, notifying Employee that jurisdiction was at issue. I informed her that generally this Office’s jurisdiction is limited to permanent employees of the District of Columbia Government. I also informed her that she had the burden of proof on the issue of jurisdiction. I ordered her to submit legal and or factual argument why this matter should not be dismissed for lack of jurisdiction by 4:00 p.m. on June 1, 2010, and notified her that if she did not respond in a timely manner, the appeal would be dismissed without further notice. I stated that the record would close at 4:15 p.m. on June 1, 2010 unless the parties were notified to the contrary. Employee did not respond to the Order, and the record closed on June 1, 2010.

JURISDICTION

This Office's jurisdiction was not established.

ISSUE

Should this matter be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee was a police officer with Agency from January 22, 2007, until her resignation, which became effective on October 31, 2008. In December 2008, she asked that Agency reinstate her. Sometime thereafter, in an undated letter, Agency informed her that due to budgetary reason, it was denying her request for reinstatement.

This Office's jurisdiction is conferred upon it by law. It was initially created by the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. *Official Code*, §1-601-01, *et seq.* (2001) (CMPA) which was amended, effective October 21, 1998, by the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124. Both the CMPA and OPRAA limit the jurisdiction of this Office to hear appeals, with some exceptions not relevant to this case, to permanent employees of the District of Columbia government who are not serving in a probationary period. See §1-601-03(s). Ms. Sarnecki was not employed by Agency or any District of Columbia government agency when she filed this petition. She has not argued or presented evidence that her resignation was anything but voluntary. *Christie v. United States*, 518 F.2d 584 (Cl. Ct. 1975).

In addition, pursuant to OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute his or her appeal. The Rule provides that failure to prosecute includes failure to "[s]ubmit required documents after being provided with a deadline for such submission." *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Employee failed to respond to the May 14, 2010 Order despite notification that the appeal would be dismissed if she did not respond to the Order in a timely manner. Employee failed to prosecute her appeal. This provides another basis for dismissing the petition.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) and must meet this burden by a "preponderance of the evidence", which is defined in OEA Rule 629.1, as that "degree of relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue". Employee failed to meet the burden of proof on the issue of jurisdiction. She also failed to prosecute her appeal. For these reasons, this petition should therefore be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge